

48A C.J.S. Judges § 140

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

V. Discipline, Suspension, or Removal

D. Proceedings

5. Hearing and Determination

§ 140. Appellate review

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  11(8)

The court's de novo review of judicial disciplinary proceedings requires an independent evaluation of the record, and findings or conclusions by the judicial commission.

The court's de novo review of judicial disciplinary proceedings requires an independent evaluation of the record and the findings or conclusions by the judicial commission.¹ Accordingly, it is the function of the reviewing court to exercise its judgment based upon the entire record.² The court must accept the findings and conclusions of the commission unless they are clearly erroneous, that is to say, unreasonable.³ While the reviewing court has plenary authority,⁴ such authority may be limited to legal questions raised in the appeal from the lower tribunal since there is no standard of review for factual questions.⁵ Errors of law by a judge should ordinarily be dealt with through the appeals process rather than through judicial disciplinary proceedings.⁶

Findings of fact and recommendations of the judicial commission are entitled to receive due consideration and are of persuasive force and given great weight,⁷ or great deference,⁸ when the commission's findings are based on the requisite evidence. Nevertheless, since the state supreme court is vested with original jurisdiction in judicial disciplinary proceedings, it is not bound by, nor required to give any weight to, the findings of the judiciary commission.⁹

Upon a review of the record, the appellate court files a written opinion and judgment directing action as it deems just and proper and may reject or modify, in whole or in part, the recommendation of the judicial commission.¹⁰ A proceeding may be remanded to a commission for reconsideration of the proceedings in the light of a court rule restricting its jurisdiction.¹¹

CUMULATIVE SUPPLEMENT

Cases:

On expedited review, Supreme Court would not accept recommendation by Judicial Discipline and Disability Commission that circuit judge be suspended without pay for 90 days, with 30 days held in abeyance for one year, based on his alleged disregard for legal procedures, failure to uphold integrity of judiciary, and conduct that undermined public confidence, even though judge agreed that suspension was warranted, in absence of Commission's submission of record that it used to make such recommendation, and instead, Supreme Court would immediately suspend judge without pay pending its receipt and review of record. [Arkansas Judicial Discipline and Disability Commission v. Carroll](#), 2022 Ark. 175, 652 S.W.3d 560 (2022).

Single invasive question by Board on Judicial Standards, as to when District Court judge began intimate relationship with his current wife, did not rise to level of due process violation in judicial discipline proceedings regarding judge's residence outside of his judicial district; Board did not use question and answer in attempt to prove charges against judge, and judge did not suggest that question influenced the panel's decision regarding Board's allegations or affected the fundamental fairness of the proceeding before the panel or Supreme Court. [U.S.C.A. Const.Amend. 14. In re Conduct of Pendleton](#), 870 N.W.2d 367 (Minn. 2015).

In reviewing judicial misconduct cases, Supreme Court is obligated to conduct an independent inquiry of the record, and in so doing, to accord careful consideration of the findings of fact and recommendations of the Commission on Judicial Performance, or its committee, which has had the opportunity to observe the demeanor of the witnesses. [Miss. Const. art. 6, § 177A. Mississippi Commission on Judicial Performance v. Bozeman](#), 302 So. 3d 1217 (Miss. 2020).

Judge was precluded from asserting, at judicial disciplinary proceeding, that his comments on social media about elected officials' policies and social and political issues could not, under First Amendment, be sanctioned pursuant to judicial code of conduct unless the speech at issue expressly criticized or praised a political candidate for office, in light of fact that judge failed to challenge the application of judicial conduct rules to him at time he violated them. [U.S. Const. Amend. 1](#). [In re Kwan, 2019 UT 19, 443 P.3d 1228 \(Utah 2019\)](#).

[END OF SUPPLEMENT]

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 [Alaska—In re Cummings, 292 P.3d 187 \(Alaska 2013\)](#).
[Ark.—Arkansas Judicial Discipline and Disability Com'n v. Proctor, 2010 Ark. 38, 360 S.W.3d 61 \(2010\)](#).
[Del.—In re Coppadge, 74 A.3d 593 \(Del. 2013\)](#).
[Ga.—In re Peters, 289 Ga. 633, 715 S.E.2d 56 \(2011\)](#).
[Iowa—In re Meldrum, 834 N.W.2d 650 \(Iowa 2013\)](#).
[Mich.—In re Justin, 490 Mich. 394, 809 N.W.2d 126 \(2012\)](#).
[Minn.—In re Conduct of Karasov, 805 N.W.2d 255 \(Minn. 2011\)](#).
[Miss.—Mississippi Com'n on Judicial Performance v. Skinner, 119 So. 3d 294 \(Miss. 2013\)](#).
[N.J.—In re Advisory Letter No. 3-11, 215 N.J. 495, 73 A.3d 1244 \(2013\)](#).
[Tenn.—In re Bell, 344 S.W.3d 304 \(Tenn. 2011\)](#).
[Tex.—In re Keller, 357 S.W.3d 413 \(Tex. Spec. Ct. Rev. 2010\)](#).
[Va.—Judicial Inquiry and Review Com'n of Virginia v. Waymack, 284 Va. 527, 745 S.E.2d 410 \(2012\)](#).
[Vt.—In re Boardman, 186 Vt. 176, 2009 VT 42, 979 A.2d 1010 \(2009\)](#).
- 2 [Ga.—In re Peters, 289 Ga. 633, 715 S.E.2d 56 \(2011\)](#).
[Idaho—Bradbury v. Idaho Judicial Council, 149 Idaho 107, 233 P.3d 38 \(2009\)](#).
- 3 [Ark.—Arkansas Judicial Discipline and Disability Com'n v. Proctor, 2010 Ark. 38, 360 S.W.3d 61 \(2010\)](#).
[Ky.— Alred v. Com., Judicial Conduct Com'n, 395 S.W.3d 417 \(Ky. 2012\),reh'g denied and opinion modified, \(Oct. 25, 2012\)](#).
[Minn.—In re Conduct of Karasov, 805 N.W.2d 255 \(Minn. 2011\)](#).
- 4 [Miss.—Mississippi Com'n on Judicial Performance v. Bradford, 18 So. 3d 251 \(Miss. 2009\)](#).

- Vt.—*In re Hodgdon*, 189 Vt. 265, 2011 VT 19, 19 A.3d 598 (2011).
- W. Va.—*In re Riffle*, 210 W. Va. 591, 558 S.E.2d 590 (2001).
- 5 Idaho—*Bradbury v. Idaho Judicial Council*, 149 Idaho 107, 233 P.3d 38 (2009).
- Pa.—*In re Merlo*, 58 A.3d 1 (Pa. 2012).
- 6 Utah—*In re Stoney*, 2012 UT 64, 289 P.3d 497 (Utah 2012).
- As to error of law as grounds for judicial discipline, see § 118.
- 7 Alaska—*In re Cummings*, 292 P.3d 187 (Alaska 2013).
- Fla.—*In re Singbush*, 93 So. 3d 188 (Fla. 2012).
- Md.—*In re Lamdin*, 404 Md. 631, 948 A.2d 54 (2008).
- Miss.—*Mississippi Com'n on Judicial Performance v. Bowen*, 123 So. 3d 381 (Miss. 2013).
- Vt.—*In re Hodgdon*, 189 Vt. 265, 2011 VT 19, 19 A.3d 598 (2011).
- 8 Ariz.—*In re Abrams*, 227 Ariz. 248, 257 P.3d 167 (2011).
- Ga.—*In re Peters*, 289 Ga. 633, 715 S.E.2d 56 (2011).
- Minn.—*In re Conduct of Karasov*, 805 N.W.2d 255 (Minn. 2011).
- Miss.—*Mississippi Com'n on Judicial Performance v. Fowlkes*, 121 So. 3d 904 (Miss. 2013).
- 9 Alaska—*In re Cummings*, 292 P.3d 187 (Alaska 2013).
- Ariz.—*In re Abrams*, 227 Ariz. 248, 257 P.3d 167 (2011).
- Fla.—*In re Singbush*, 93 So. 3d 188 (Fla. 2012).
- Ga.—*In re Peters*, 289 Ga. 633, 715 S.E.2d 56 (2011).
- La.—*In re Boothe*, 110 So. 3d 1002 (La. 2013).
- Mich.—*In re James*, 492 Mich. 553, 821 N.W.2d 144 (2012).
- Miss.—*Mississippi Com'n on Judicial Performance v. Fowlkes*, 121 So. 3d 904 (Miss. 2013).
- Wis.—*In re Judicial Disciplinary Proceedings Against Prosser*, 2012 WI 103, 343 Wis. 2d 548, 817 N.W.2d 875 (2012).
- 10 Ark.—*Arkansas Judicial Discipline and Disability Com'n v. Proctor*, 2010 Ark. 38, 360 S.W.3d 61 (2010).
- Ga.—*In re Peters*, 289 Ga. 633, 715 S.E.2d 56 (2011).
- Miss.—*Mississippi Com'n on Judicial Performance v. Bowen*, 123 So. 3d 381 (Miss. 2013).
- Mont.—*Inquiry Concerning Complaint of Judicial Standards Com'n v. Not Afraid*, 2010 MT 285, 358 Mont. 532, 245 P.3d 1116 (2010).
- Neb.—*In re Florom*, 280 Neb. 192, 784 N.W.2d 897 (2010).

NC.—*In re Hartsfield*, 365 N.C. 418, 722 S.E.2d 496 (2012).

Tex.—*In re Keller*, 357 S.W.3d 413 (Tex. Spec. Ct. Rev. 2010).

Utah—*In re Stoney*, 2012 UT 64, 289 P.3d 497 (Utah 2012).

Wis.—*In re Judicial Disciplinary Proceedings Against Prosser*, 2012 WI 103, 343 Wis. 2d 548, 817 N.W.2d 875 (2012).

11

Ky.—*Nicholson v. Judicial Retirement and Removal Commission*, 562 S.W.2d 306 (Ky. 1978).

End of Document

© 2023 Thomson Reuters. No claim to original U.S.
Government Works.